

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

JESSICA BENTON, SHELTY BRYANT,
ANNE MARIE CAVANAUGH, ALYSSA
GARRISON, and CLARE THOMAS,

Plaintiffs,

v.

CITY OF SEATTLE,

Defendant.

No. 2:20-CV-1174

DEFENDANT CITY OF SEATTLE'S
NOTICE OF INTENT TO FILE A
RESPONSE TO PLAINTIFFS' MOTION
FOR TEMPORARY RESTRAINING
ORDER

(1) Under L.C.R. 65(b)(5), the City hereby notifies the Court that it intends to file a response and opposition to Plaintiffs' Motion for Entry of a Temporary Restraining Order ("TRO").

(2) During a phone conversation on August 2, 2020, Plaintiffs' counsel called to request that the City stipulate to a TRO prohibiting the use of crowd control devices. (Sharifi Dec., ¶¶ 2-3).

Without further information or a document to review, the City's counsel advised that

Plaintiffs' request for entry of a TRO appeared to contradict determinations made by Judge

Robart in *United States v. City of Seattle*, 12-cv-1282-JLR and would be in potential conflict

DEFENDANT CITY OF SEATTLE'S NOTICE OF INTENT TO FILE A
RESPONSE TO PLAINTIFFS' MOTION FOR TEMPORARY
RESTRAINING ORDER
(20-cv-00887RAJ) - 1

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with this Court’s preliminary injunction in *Black Lives Matter v. City of Seattle*, Case No. 2:20-cv-00887-RAJ, Dkt. No. 42, (W.D. Wash. June 17, 2020). (Sharifi Dec., ¶ 4). Counsel for Defendants asked Plaintiffs’ counsel if Plaintiffs were requesting that Judge Robart or Judge Jones’ Orders be modified or stricken. (*Id.* at 4). Plaintiffs’ counsel acknowledged the conflict between Plaintiffs’ requested relief and the existing Court orders defined above. (*Id.*). Plaintiffs’ counsel then declared that she wanted a federal judge to restrict the crowd control devices at issue. (*Id.*). Plaintiffs’ counsel then asked if the City would agree, to which the City did not. (*Id.* at 5).

(3) Based on the same set of circumstances, namely the City’s crowd management tactics in June and July 2020, Plaintiffs seek the same relief initially sought by the plaintiffs in *Black Lives Matter v. City of Seattle*, Case No. 2:20-cv-00887-RAJ, Dkt. No. 6-1, a complete bar on tear gas and crowd control tools. However, this Court has previously considered whether “complete bar” injunctive relief was appropriate and made a final decision with respect to the appropriate level of relief.

(4) The United States Supreme Court rejected the concept of “[p]ermitting repeated litigation of the same issue as long as the supply of unrelated defendants holds out.’ *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 328, 99 S. Ct. 645, 650, 58 L. Ed. 2d 552 (1979). (quoting *Kerotest Mfg. Co. v. C–O–Two Co.*, 342 U.S. 180, 185, 72 S.Ct. 219, 222, 96 L.Ed. 200 (1952)). “The general rule should be that in cases where a plaintiff could easily have joined in the earlier action or where, either for the reasons discussed above or for other reasons, the application of offensive estoppel would be unfair to a defendant, a trial judge should not allow the use of offensive collateral estoppel.” *Id.*, 439 U.S. at 331.

(5) In this instance, Plaintiffs seek to relitigate issues already contemplated by this Court and by Judge Robart to secure a different outcome based on the same precipitating events.

(6) The City respectfully seeks a status conference to discuss Plaintiffs' requested relief in their motion for entry of TRO, and to determine a briefing schedule acceptable to this Court.

DATED this 4th day of August, 2020.

PETER S. HOLMES
Seattle City Attorney

By: /s/ Ghazal Sharifi
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Attorney for Defendant City of Seattle

CERTIFICATE OF SERVICE

I hereby certify that on August 4, 2020 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

J. Talitha Hazelton SMITH LAW LLC 4301 NE 4 th Street P.O. Box 2767 Renton, WA 98059 (206) 715-4248 <i>[Attorneys for Plaintiffs]</i>	(x) Via Email talitha@thesmithlaw.com
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/s/ Ghazal Sharifi

Assistant City Attorney